FROM BILASPUR DISTRICT.

(2)

IN THE HIGH COURT OF CHHATTISGARH

AT – BILASPUR **Single Bench**

Second Appeal No. 420 **/ 2006**

P.R. No. 2612 dated 19/12/06 Presented by Shri ... Advocate

Suit valued at RS.24,000.00

Court fee affixed RS.2,800.00

First appeal valued Rs. 25,000.00

Court fee affixed RS. 2,800.00

Second appeal valued Rs. 4,800.00

Court fee affixed RS. 480.00

APPELLANT: Smt. Sarla Devi Gupta, aged 70 years, wife of Shri Ramesh Chandra Gupta, resident of Sarkanda, Bilaspur, police station Sarkanda, post office, tehsil & district Bilaspur (C.G.)

(Defendant/Respondent/tenant)

VERSUS

RESPONDENT: (1) Smt. Tara Devi Dubey, aged 66 years, wife of late Shri Gauri Shanker Dubey, resident of Sarkanda, Bilaspur, police station Sarkanda, post office, tehsil & district Bilaspur (C.G.)

(Plaintiff/Appellant/landlady)

Oath Commissioner A. PATRIKAR BILASPUR (C.G.) Bilaspur Tahsil

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.420 of 2006

Smt. Sarla Devi Gupta

versus

Smt. Tara Devi Dubey

JUDGMENT

Post for 3-07-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

53

AFR
3.7.07

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.420 of 2006

Appellant — Smt. Sarla Devi Gupta, aged 70 years, wife of Shri Ramesh Chandra Gupta, resident of Sarkanda, Bilaspur, Police Station Sarkanda, Post Office, Tahsil & District Bilaspur (C.G.)

(Defendant/Respondent/tenant)

versus

Respondent — Smt. Tara Devi Dubey, aged 66 years, wife of late Shri Gauri Shanker Dubey, resident of Sarkanda, Bilaspur, Police Station Sarkanda, Post Office, Tahsil & District Bilaspur (C.G.)

(Plaintiff/Appellant/landlady)

Second Appeal under Section 100 of the Code of Civil Procedure, 1908

Present : Appellant by Shri Somnath Verma, learned counsel.
Respondent by Shri Sanjay K. Agrawal, learned counsel.

JUDGMENT

(Delivered on this 3rd day of July, 2007)

This is defendant's second appeal. She is aggrieved by the reversal of the judgment and decree passed in Civil Suit No.39-A/2002 dated 12-08-2004 dismissing the plaintiff's suit for eviction by the VIIIth Additional District Judge, Fast Track Court, Bilaspur vide judgment dated 22-08-2006 delivered in Civil Appeal No.1-A/2005.

(2) Admittedly, the appellant/defendant is a tenant in the suit accommodation.

[redacted]

(3) The respondent/plaintiff instituted a suit on 15-10-1998 for eviction of the appellant/defendant from the suit premises pleading that she had let a potion of the house-cum-shop to the appellant/defendant on rent from 01-04-1997. It was pleaded that she required the accommodation for own house and for *bona fide* reason also. No other house or shop was available to the plaintiff within the limits of the Municipal Corporation, Bilaspur. Description of the accommodation let out to the appellant/defendant was shown in Schedule 'A' to the plaint. It was mentioned that the appellant/defendant was running "*Gupta Jalpan Grih*" in the accommodation.

(4) On 01-10-2001, the respondent/plaintiff moved an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment not only in the plaint allegations but also to completely amend the description of the accommodation given in Schedule 'A'. Whereas, the Schedule 'A' filed originally with the plaint showed the area of the accommodation shown as house-cum-shop as 35 Feet x 30 Feet the amended Schedule 'A' showed the description of the accommodation let out as 18 Feet x 17.6 Feet. The size of the suit accommodation was thus reduced to half. The accommodation was described as "the suit shop" in the schedule. In para 1, at two places, by the amendment, the accommodation described was as "the suit shop" only. It was pleaded that as per the amended schedule, only the suit shop had fallen to the share of the respondent/plaintiff. In paragraphs 1 and 5 also, the accommodation was solely described as the suit shop. It was also mentioned that since the appellant/defendant had her own house in the nearby vicinity, she did not require the suit shop any more.

(5) The appellant/defendant denied the pleadings in toto and pleaded that in fact she had taken an open piece of land on rent of Rs.40/- per month from Gauri Shanker Dubey, the husband of the respondent/plaintiff in 1972 and had constructed a room at his own expense. The rent was gradually increased upto Rs.400/- per month. The appellant/defendant had filed the suit solely with an intention of letting out the accommodation at a higher rent. The respondent/plaintiff had about seven other shops in her possession and did not require the suit accommodation *bona fide*.

(6) The learned IXth Civil Judge Class-II, Bilaspur dismissed the suit while recording a finding that the respondent/plaintiff had failed to prove *bona fide* requirement of residence for the suit shop. In appeal, the learned VIIIth Additional District Judge, Bilaspur, without application of judicial mind to the pleadings as also to the amendment introduced by the plaintiff on 01-10-2001 while reversing the judgment and decree passed by the lower Court, granted a decree for eviction of the appellant/defendant under Section 12(1)(e) of the Chhattisgarh Accommodation Control Act, 1961 (henceforth 'the Act'), i.e., on the ground of *bona fide* requirement for residence.

(7) This appeal was admitted on the following substantial question of law :-

> "Whether the 1st Appellate Court is justified in reversing the judgment and decree dated 12.8.2004 in civil suit No.39-A/2002 passed by the 9th Civil Judge, Class-II, Bilaspur and granting the relief of eviction of the tenant from an

accommodation let out primarily for composite purpose of residence as also for non residence on the ground of bonafide requirement for residence of the landlord?"

(8) Shri Somnath Verma, learned counsel for the appellant argued that the suit accommodation was predominantly let for non-residential purpose. The plaintiff had specifically deposed that she required the accommodation only for her residence. Therefore, a decree for eviction of the appellant/defendant – tenant under Section 12(1)(e) of the Act could not be granted under law. It was also urged that the pleadings of the respondent/plaintiff did not specifically show the purpose for which the suit accommodation was let out, and from the description of the accommodation being used by the appellant/defendant as "*Gupta Jalpan Grih*" and the admission of the respondent/plaintiff in para 20 of her testimony, it was crystal clear that the accommodation in question was predominantly let out for non-residential purpose. Reliance was placed on ***Shabir Ahmad*** **vs.** ***Sham Lal and another,*** **AIR 2002 SC 1036,** ***Dr. Gopal Das Verma*** **vs.** ***Dr. S.K.Bhardwaj and another,*** **AIR 1963 SC 337** and ***Miss S. Sanyal*** **vs.** ***Gian Chand,*** **AIR 1968 SC 438.**

(9) On the other hand, Shri Sanjay K. Agrawal, learned counsel appearing on behalf of the respondent/plaintiff argued in support of the impugned judgment. He placed reliance on ***Jagjit Kumar*** **vs.** ***Jagdishchandra*****, 1982 JLJ 319**, wherein it was held by a Division Bench of the Madhya Pradesh High Court that in a case of composite tenancy if the landlord proves ***bona fide*** requirement of the non-residential part of the accommodation, a decree for eviction of the

tenant from the entire premises including the residential portion could be passed.

(10) Having heard the rival contentions, I have perused the record minutely.

(11) Section 2(a) of the Act defines "accommodation" as under :-

> "**2. Definitions.** – In this Act, unless the context otherwise requires, –
>
> (a) "accommodation" means any building or part of a building, whether residential or non-residential and includes, –
>
> (i) any land which is not being used for agricultural purposes;
>
> (ii) garden, grounds, garages and out-houses, if any, appurtenant to such building or part of the building;
>
> (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
>
> (iv) any furniture supplied by the landlord for use in such building or part of building;"

(12) Chapter III of the Act deals with control of eviction of tenants. Section 12 of the Act provides the ground on which a suit could be filed against the tenant for his eviction on any one or more of the grounds mentioned therein. Clauses (e) and (f) of sub-section (1) of Section 12 of the Act are as under :-

> "**12. Restriction on eviction of tenants.** – (1) Notwithstanding anything to the contrary contained

in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(a)	xxxxx	xxxxx	xxxxx
(b)	xxxxx	xxxxx	xxxxx
(c)	xxxxx	xxxxx	xxxxx
(d)	xxxxx	xxxxx	xxxxx

(e) that the accommodation let for residential purposes is required bonafide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

(f) that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;"

(13) Besides "residential or non-residential", the definition of "accommodation" does not include "for any other purpose" as in the case of ***Dr. Gopal Das Verma*** **vs.** ***Dr. S.K.Bhardwaj and another*** (supra), which relates to Delhi and Ajmer Rent Control Act, wherein the definition of the word "premises" in Section 2(g) includes "for any other purpose" also besides residence and commerce. It is, therefore,

necessary to first ascertain the predominant purpose for which the accommodation was let out. It is also very important to note that the nature of the accommodation prior to being let out is wholly immaterial and the purpose for which it was let out is only to be looked into. The words "let for residential purpose" appearing in clause (e) of sub-section (1) of Section 12 of the Act and "let for non-residential purpose" appearing in clause (f) of sub-section (1) of Section 12 of the Act leave no room for any doubt that the purpose for which the accommodation was let out would determine the ground available to the landlord under Section 12(1) of the Act. An accommodation, which may be a house-cum-shop, could be let out solely for residence or for non-residence or for both. The plaintiff is required to specifically aver and prove the purpose for which the accommodation was let out. The pleadings in the plaint do not show anywhere the purpose for which the accommodation was let out to the appellant/defendant. Schedule 'A' originally annexed to the plaint showed that the appellant/defendant was running "*Gupta Jalpan Grih*" in the suit accommodation. It is very surprising to note that the learned lower appellate court failed to notice that the respondent/plaintiff had specifically pleaded in para 1 that she had let out "a portion of the" (emphasis supplied by me) house-cum-shop to the appellant/defendant, but did not specifically mention which portion was let out to the appellant/defendant, i.e., whether residential or non-residential. It is also equally surprising that both the Courts below did not notice that the amended pleadings clearly reveal that after partition only that portion of the accommodation which was shown in the amended Schedule 'A' had fallen to the share of the respondent/plaintiff. The description and size of this amended portion of the accommodation is materially different from the description of the

accommodation given originally in Schedule 'A'. Both the Courts below also failed to notice that the respondent/plaintiff by amending the plaint had changed the description of the accommodation from "house-cum-shop" to "suit shop only" and had specifically pleaded in para 3 that only the suit shop had fallen to the share of the respondent/plaintiff. The respondent/plaintiff, in para 20 of her testimony, had stated that the appellant/defendant was running a hotel in the suit accommodation. Her testimony that the appellant/defendant was also residing in the suit accommodation was rendered unworthy of credit by the unrebutted testimony of Rajesh Gupta, D.W.-1 and Durga Prasad Kashyap, D.W.-2. In this view of the matter, it is crystal clear from the pleadings, particularly the amendment in the plaint and Schedule 'A' that the accommodation let out to the appellant/defendant was solely for non-residential purpose, i.e., for running "*Gupta Jalpan Grih*". That being so, the legal position is crystal clear because an accommodation let out solely for non-residential purpose could not be got evicted on the ground of *bona fide* requirement for residence. The learned lower appellate Court committed a material error in ignoring the pleadings and the amended plaint and schedule map and was wholly unjustified in granting a decree for eviction of the appellant/defendant under Section 12(1)(e) of the Act. The impugned judgment and decree, being wholly contrary to law, is liable to be set aside.

(14) It is true that an accommodation could be let out for residential as well as for non-residential purpose as in the case of a doubled storied building where the ground floor may be let out for a shop whereas the first floor may be let out for residence. In such a case, for eviction of the tenant under Section 12(1)(e) and (f) of the Act, the

plaintiff would be required to plead and prove that the accommodation is required *bona fide* not only for her residence in first floor but also for non-residential purpose in the ground floor. In a different situation like the present one, where the house is merely a "*Khapra Posh* (Tiled Accommodation)" and predominantly let out for non-residential purpose, i.e., for running a hotel, in such a case, if only a small portion of the accommodation is being used by the tenant for residence also, the accommodation being predominantly non-residential in nature, the plaintiff would be required to aver and prove *bona fide* requirement for a non-residential purpose. On such pleading and proof, in the facts and circumstances of each case, the plaintiff may be entitled to a decree for eviction of the tenant from the entire premises even though a small portion of the same house was being utilized for residence also. Vice versa in a case where the accommodation is let out predominantly for the purpose of residence and only a small portion is being utilized for non-residential purpose like a Pan-Shop or a Tea-Shop or a small provision store, then upon pleading and proof of *bona fide* requirement for residential purpose, the plaintiff, in the facts and circumstances of such case, may be entitled to a decree for eviction of the tenant form the accommodation although a small portion was being used for non-residential purpose. This is precisely the law as has been held in ***Jagjit Kumar* vs. *Jagdishchandra*** (supra) by a Division Bench of the Hon'ble High Court of Madhya Pradesh. The facts pleaded, evidence led relating to size of the accommodation primarily let out for a particular purpose and the size of the portion used for a purpose other than the purpose for which the accommodation was let out would have to be considered.

(15) The case law relied on by learned counsel for the respondent/plaintiff does not apply to the present case, since in view of the amendment to the plaint and Schedule 'A', the accommodation let out to the appellant/defendant and in his possession was shown to be a suit shop, i.e., a non-residential accommodation, which had fallen to the share of the respondent/plaintiff. The evidence led by the plaintiff to show that a part of the accommodation was being used for residence also is wholly unworthy of credit. Therefore, such an accommodation could not be got evicted on the ground of *bona fide* requirement for residence of the respondent/plaintiff. The lower appellate Court was thus wholly unjustified and acted contrary to law in granting a decree for eviction under Section 12(1)(e) of the Act.

(16) In the result, the appeal is allowed. The substantial question of law is answered in negative in favour of the appellant/defendant and against the respondent/plaintiff. The impugned judgment and decree passed by the lower appellate Court in Civil Appeal No.1-A/2005 is set aside. In the facts and circumstances of the case, there shall be no order as to costs. A decree be drawn accordingly.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal